



Applicant's attorney explained the financial burden on Applicant of filing a response but SPE Kyle refused to make a decision over the telephone or walk through the relevant portions of the papers with the guidance of Applicant's attorney and said Applicant should file a response. The bureaucratic mindset where Patent Office employees impose these financial burdens on Applicants devoid of the reality that the country is in the worst economic recession in 70 years is unfair and should not be permitted. It amounts to abuse of the administrative legal proceedings where Applicant's legal fees are knowingly unnecessarily increased.

Since the initial error was that of the Patent Office in not entering the amended claims and issuing an Action that addresses the wrong claims, and since the error could have been easily resolved by SPE Kyle withdrawing the Office Action by taking five minutes to type and to fax a statement of withdraw to Applicant's attorney; Applicant should never have had to respond or to petition this issue. Applicant should never have had to pay this petition fee of \$400.00 and should never have had to pay the extension fees of \$555.00.

Applicant requests refund of the extension fees of \$555.00 and waiver or alternatively, refund of the petition fee of \$400.00 authorized below.

Please note that even a refund of all fees does not make the Applicant whole because Applicant has had to incur legal fees. SPE Kyle seemed to callously disregard that burden placed on the Applicant is refusing to withdraw the Office Action when requested. This seems to be a case of abuse of the administrative legal process.

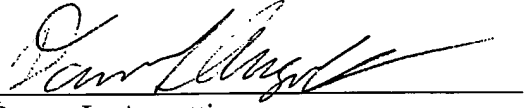
Fee

The petition fee under 37 CFR 1.17(f) for a decision not specifically provided for is \$400.00 for a small entity. Authorization is given to charge the fee of \$400.00 to Deposit Account No. 503219. A duplicate of this sheet is enclosed.

Authorization is given hereby to charge any deficiency or credit any overpayment in the enclosed fee, or charge any additional extension of time fees necessary to preserve the pendency of the subject application, to Deposit Account No. 503219.

Respectfully submitted,

Dated: August 19, 2010

By: 
Donna L. Angotti
Registration No. 32,679

Attorneys for Applicant
LAW OFFICES OF DONNA ANGOTTI
140 Broadway, Suite 4600
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(212) 858-7515
(212) 858-7750 (FAX)

From: Charles.Kyle@USPTO.GOV
Subject: Re: Serial No. 09/611,548 Request for Withdrawal of Office Action of 2/19/2010 since it did not examine claims as amended 11/5/2009
Date: 08/16/2010 12:29 PM
To: email@angottilaw.com

Ms. Angotti,

Please note that we cannot respond to your email of August 11, 2010. MPEP 502.03, subsection II, quoted below, sets forth guidelines for communication of substantive matters via the Internet during prosecution of patent applications.

II.< COMMUNICATIONS VIA THE INTERNET AND AUTHORIZATION (ARTICLE5)

Communications via Internet e-mail are at the discretion of the applicant.

Without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application.

The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

A written authorization may be withdrawn by filing a signed paper clearly identifying the original authorization. The following is a sample form which may be used by applicant to withdraw the authorization:

"The authorization given on _____, to the USPTO to communicate with me via the Internet is hereby withdrawn. I understand that the withdrawal is effective when approved rather than when received."

Where a written authorization is given by the applicant, communications via Internet e-mail, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used. In such case, a printed copy of the Internet e-mail communications MUST be given a paper number, entered into the Patent Application Locating and Monitoring System (PALM) and entered in the patent application file. A reply to an Office action may NOT be communicated by applicant to the USPTO via Internet e-mail. If such a reply is submitted by applicant via Internet e-mail, a paper copy will be placed in the appropriate patent application file with an indication that the reply is NOT ENTERED. >For Image File Wrapper (IFW) processing, see IFW Manual.<

USPTO employees are NOT permitted to initiate communications with applicants via Internet e-mail unless there is a written authorization of record in the patent application by the applicant.

All reissue applications are open to public inspection under 37 CFR 1.11(a) and all papers relating to a reexamination proceeding which have been entered of record in the patent or reexamination file are open to public inspection under 37 CFR 1.11(d). USPTO employees are NOT permitted to initiate communications with applicant in a reissue application or a patentee of a reexamination proceeding via Internet e-mail unless written authorization is given by the applicant or patentee.

We will be happy to address any concerns you have, should these concerns be conveyed in suitable written form. Thanks you.

/Charles Kyle/
SPE, Art Unit 3695
Knox Building 4A65
(571) 272-6746

-----Original Message-----

From: email@angottilaw.com [mailto:email@angottilaw.com]
Sent: Wednesday, August 11, 2010 2:51 AM
To: Subramanian, Narayanswamy; Kyle, Charles R.

Subject: Serial No. 09/611,548 Request for Withdrawal of Office Action of 2/19/2010 since it did not examine claims as amended 11/5/2009

Dear Examiner Subramanian and SPE Kyle:

I have the Office Action of 2/19/2010 for 09/611,548. This Office Action does not move the case forward. The Petition decision issued on March 30, 2010 withdrew finality of the Action of 10/3/2008. Thus, the "Amendment and Reply to Office Action" of November 5, 2009 should have been entered (see Petition, page 26 at lines 1-2, and page 36 at lines 3-5, and Amendment of 11/5/2009 at page 4, lines 12-14.). The Patent Office has not entered the Amendment of 11/5/2009 and has not examined the claims as amended. The Office has erred by not considering the claims as amended 11/5/2009. The claims in Claims Appendix Two should have been examined.

I respectfully request that you withdraw the Office Action of 2/19/2010 and examine the amended claim in a new Office Action.

At the very least, you should have answered all material traversed in my papers of 3/4/2009 and 11/5/2009. The Office Action of 2/19/2010 does not do so. Most of the delay in this application has been due to Patent Office failure to answer all material traversed, and it is extremely disappointing to see this trend continued.

It seems that the only appropriate resolution is that the Office vacate the February 2010 Action. Any further examination should reconsider the application based on the status as it stands as of examination date, and fully answer all material traversed.

This application has been pending for over ten years. The time for guesswork is long past. It is time to consider the claim language precisely, read the MPEP and other instructions to examiners carefully and not make up rules that have no basis in any authorized written document, and to answer all material traversed.

Among the Patent Office errors:

- * The Action of 2/19/2010 examined claims that are no longer pending. The Office neglected the amendment of 11/5/2009 (See Amendment of Nov., 5, 2009, page 4, lines 12-14, and Claims Appendix Two, at pages 82-121.)

- * The Action of 2/19/2010 raises a "utility" rejection, but the analysis bears no resemblance to the required analysis set forth in MPEP § 2107 et seq. I have asked repeatedly that the Office not improvise new legal analyses or examine based on personal opinions and preferences, but rather be confined to those grounds for rejection that exist in written legal documents. I have asked that where the MPEP sets forth procedural requirements for examination, the Office follow them. Please either honor these two requests or provide an explanation for any departure from them.

- * Each of the method claims specifically says that certain steps involve a "computer." The Office Action repeatedly states "the method can be performed by a human and also by a computer," but never explains how a claim that requires a "computer" can be performed entirely by a human. The failure to answer all material traversed has imposed delay. If the examiner explains the apparent contradiction in the stated position, I can resolve any legitimate point the examiner has in mind, but when the Action merely repeats earlier actions with no explanation or elaboration and no fair answer to the material traversed, prosecution cannot advance.

- * The § 112 ¶ 2 analysis appears to confuse breadth with indefiniteness, and to reject alternative language. My prior papers (Amendment of 11/5/2009, pages 29-33) suggested that these rejections appear to violate MPEP §§ 2173.04 and 2173.05(h). However, because the Action fails to answer all material traversed, I have no idea what the reasoning of the rejection is.

- * I note the objection to the drawings filed 7/7/2000. The application was published with formal drawings, 2005/0010517, and it is unclear why this issue is raised at all.

- * The Action of 2/19/2010 objects to the abstract. The abstract complied with the law as it existed in July 2000, and the PTO has no authority for retroactive rule making. I note that MPEP § 608.01(b) is cited as if it stated requirements for applicants. However, the memorandum from the President to the Office that I attached as Exhibit 3 to my paper of 11/5/2009 forbids the Offices from citing the MPEP against applicants. Please explain any exemption from instructions from the Executive Office of the President. If the Office can offer no such explanation, please cease citing non-legal documents as if they were law. The stated concerns for storage "on computer tape," in 2010, are not legitimate. This abstract has been fine for ten years-if this objection has any basis in law, and any reason other than to harass and delay, please explain.

- * As T.C. Director Coggins' decision of March 30, 2010 notes, the claims had been searched by several previous examiners and allowed over the art. Examiner Subramanian stated in the interview of May 2008 that he had no personal knowledge of any art that might be applicable. Under MPEP §§ 704.01 and 706.04, Examiner Subramanian had no authority to perform a new search. In 10/3/2008, the examiner followed the MPEP, and raised no new prior art issues. Yet the IFW shows that he did a new search in February 2010, and on 2/19/2010, he "took a new approach and reoriented the view" of two previous examiners, by raising new § 103 issues. It is difficult to reconcile the reopening of

long-resolved § 103 issues with the MPEP, or with any motive other than deliberate obstruction. At the very least, he did not use the required form paragraph. We've discussed this on several occasions by phone and in papers; he has stated that he believes that his personal opinion of "proper examination procedure" trumps the MPEP. I request that he clear this view with SPE Kyle and T.C. Director Coggins. Further, these new issues are totally bogus, and seem to be imposed for no purpose other than delay. Kindly obtain the signature of T.C. Director Coggins for any new rejection based on a new search (or any other departure from MPEP instructions), or else leave § 102 and § 103 issues in repose.

* The Office Action of 2/19/2010 extracts certain parts of some claims as "non-functional descriptive material." The MPEP gives no authorization to do what has been done in this Action, and the Federal Circuit has forbidden it repeatedly. In contrast, in October 2008, at page 4, Examiner Subramanian characterized almost identical language in other claims as "functional descriptive material." Perhaps the Examiner has a legitimate explanation for the 180° turnaround and his view of the law-I would like both carefully explained in any further paper that raises any rejection so that I have fair notice of which of the two is really meant, and a fair opportunity to move the case forward.

* I have noted several times that it is not lawful and improper to cite the dissent from the BPAI Bilski decision as if it were law - a dissent is a statement of what the law is not. (See Petition of July 6, 2009 at page 33-34). Yet the Office Action repeats this improper act. (Action of 2/19/2010 at page 6.) Improper acts in Office Actions do not advance prosecution. Please stop.

* The reason for the large number of claims is explained in my Amendment of 11/5/2009 at page 11. Because the legal standards that are applied in the Office Actions are totally unpredictable, all I can do is present the Office with more and more claims in more and more variations, in hopes of finding some that meet the Examiner's personal, unwritten, and always changing standards.

* I note that the Office Action was issued 2/19/2010 and refers to a petition decision, but the decision itself was not mailed until 3/20/2010. Given the repeated breaches of procedure by the Office, this sequencing is highly anomalous. Given the Office's past conduct, I would like to ask that if the Office has a good faith explanation for delaying the mailing of the Petition decision until long after the Action, I would like to hear it. Otherwise, I have difficulty avoiding an inference that the timing was structured deliberately to deny this applicant an opportunity to prosecute the application fully within the rights provided by the petition decision. I filed the best paper I could in November 2009 to move the case forward; I would appreciate it if I could start counting on the same from the Office.

SPE Kyle, I understand that you were new to this application in February 2010. This application is far past its five year, third action trigger for your careful supervision under MPEP § 707.02. Please review all future Actions carefully to ensure the following:

* that the Actions answer all material traversed. This rule has been repeatedly breached; overwhelmingly, the delays in this application result from issues that cannot be resolved because the Office chooses to ignore the papers.

* that no rejection or objection is raised on a legal principle that has not been validly promulgated. I refer you to the President's Bulletin on Agency Good Guidance Practices, which was attached as Exhibit 3 to the Amendment of 11/5/2009.

Mr. Subramanian and Mr. Kyle, I want this application to move forward. However, I can't do it myself-I need you to help by doing the best jobs you can. I understand that both the Examiner and supervisor have had to pick this complex case up from previous Patent Office employees. I understand that the case is procedurally complex almost beyond belief. A previous examiner explained that Art Unit 3690 had a deliberate and intentional policy of obstruction and delay (Interview Summary of 2/26/2007, ¶ 41); if this is no longer 3690 policy, I have yet to see the change. I stand ready, willing and able to move this application forward, as soon as the Office is. I have gone out of my way to provide claim alternatives, and to point the Office to the relevant written guidelines that should govern PTO conduct so that we can move forward with agreement at least on procedure. My requests that the Office simply follow the law have been met with what is beginning to look like deliberate retaliation. Perhaps I've misread the situation, and if so, I'd like an explanation-but the deviations from written procedures are so numerous and consistent that I have begun to suspect retaliation.

Please confirm by telephone call to (212) 858-7515 that the February 2010 Action is vacated, and that my client and I can count of careful examination of this application including examination of the claims as amended. We would like examination only for requirements of law that exist in validly-issued form, without violations of non-discretionary instructions that the Office and the President have given. We would like the benefit of all laws that require the Office to act in favor of applicants, procedural and substantive-you both took an oath to faithfully execute the laws, and I'd like you to follow that oath.

I will contact you for your decision.

Respectfully submitted,

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